**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Civil Misc. Writ Petition No. 100 of 2001**
**(Old No. 22816 of 1992)**

Jitendra Kumar Verma, S/o Late Sri Vijay Singh,
R/o Karenda, P.O. Karenda, P.S. Fugana,
District Muzaffarnagar, at present Sub Inspector
P.S. Dalanwala, District Dehradun.

……. Petitioner.

**Versus**

(1) State of U.P. through Secretary,
Home Department, Government of U.P.
Secretariat Lucknow.
(2) Director General of Police, U.P.
Lucknow / Chairman, C.I. (II)
Selection Committee.
(3) Inspector General of Police
Police Head Quarters U.P. Allahabad.
Shri Ashok Kumar Pahwa, Inspector
Cooperative Cell, Jitendra Kumar Verma
Meerut.
(5) Om Vir Singh Dhaka Cooperative Cell,
Dehradun.
(6) Sri Jaswant Singh Inspector enforcement
squad U.P.S.E.B., Dehradun.

……. Respondents

Sri Gopal Narain, learned counsel for the petitioner.
Smt. Beena Pandey and Sri N.P. Sah, learned counsel for the respondents.

**Hon. Prafulla, C. Pant, J.**

By means of this writ petition, the petitioner has sought writ in the nature of mandamus commanding respondent no. 1 to 3 to promote the petitioner to the post of Inspector of Police w.e.f. 1985. Arrears of salary are also claimed from the year 1985.

(2) Heard learned counsel for the parties.

(3) Brief facts of the case are that petitioner joined the Civil Police in the State of U.P. as Sub Inspector in the year 1966. He remained posted in several Districts, including Lucknow, Ghaziabad, Saharanpur and Pauri Garhwal. He also remained Officer-in-Charge of Police Station in several places. When he was Officer-in-Charge of Police Station Bahadurgarh in District Ghaziabad in the year 1980, it appears that some complaints were made against him and a case was registered under Section 409, 342, 218 of I.P.C. Investigation of said case was handed over to C.B.C.I.D.. Meanwhile, the petitioner's promotion was due and he appeared before the Selection Committee for interview for his promotion. It is alleged by him that his promotion was recommended by the Selection Committee, but is was kept in sealed cover as the C.B.C.I.D. was investigating the aforesaid case against the petitioner. It is alleged in the writ petition that no charge sheet was filed even after eight years by the Investigating

Agency against the petitioner. Relying on the principle of law laid down in ***Union of India and others Vs. K.V. Jankiraman and others; 1991 (63). Pg. 767,*** it is pleaded that the petitioner cannot be deprived of his promotion. (This writ petition was filed before Allahabad High Court in the year 1992 and received by this Court under Section 35 of U.P. Reorganization Act, 2000, for its disposal, as the recommendation of the Selection Committee is said to have been made in District Dehradun, where the petitioner was posted at the time of filing of this writ petition).

(4) A counter affidavit on behalf of respondents was filed before Allahabad High Court in which it is admitted that the petitioner joined Uttar Pradesh Police as Sub Inspector and remained posted at several places mentioned in the writ petition. It is also admitted that the petitioner was called for interview for his promotion to the post of Inspector of Police. However, it is stated that result of petitioner in C.I. List-2 of 1985 was not declared as there were two departmental proceedings going on against the petitioner with the result that in compliance of Government Order No. 15/85.198-Karmik-1, dated 30.11.1983, was kept in the sealed cover. However, in Para 11 of the counter affidavit, it is admitted that investigation was pending with the C.B.C.I.D. in the matter and no sanction was received from the Government for prosecution of the petitioner till the counter affidavit was filed. In Para 14 of the counter affidavit, it has been further stated that the petitioner earned two adverse entries.

(5) In the rejoinder affidavit the petitioner has reiterated has reiterated the averments made in the writ petition.

(6) Learned counsel for the petitioner drew attention of this Court to the principle of law laid down in ***Union of India and others Vs. K.V. Jankiraman and others; 1991 (63), Pg. 767,*** and it is argued that unless a charge sheet is submitted before the Court for criminal prosecution of an employee or the employee is given charge memo of departmental enquiry, his promotion cannot be held up and nor can it be kept in a sealed cover. Attention of this Court is also drawn to another case ***Union of India and others Vs. Sangram Keshari Nayak; (2007) 2 Supreme Court Cases (L & S) 587***, in which the view taken in K.V. Jankiraman's case was followed.

(7) In the counter affidavit it has nowhere been stated that till the petitioner retired either he was served with the charge sheet of the departmental enquiry or if any charge sheet is submitted by the Investigation Agency before the Court of law in respect to criminal charges. What has been stated in the counter affidavit is that sanction was sought from the Government for prosecuting the petitioner, but Government had not accorded the same till the counter affidavit was filed. Even today on behalf of the respondents learned Standing Counsel is not in a position to make a statement if sanction is accorded. It is pertinent to mention here that incident, relating to investigation, relates to ten years before this writ petition was filed. Learned counsel for the petitioner states that the

petitioner, during the pendency of this writ petition, has been superannuated from service. It is now only question of notional promotion, which is to be seen if the petitioner is entitled to.

(8) Since no charge sheet of the departmental enquiry appears to have been served on the petitioner nor any charge sheet is stated to have been filed before a criminal court after the investigation was over and meanwhile the petitioner has already retired from service. In the circumstances, any recommendation whether recommending promotion or otherwise cannot be kept in sealed cover for an indefinite period. In the counter affidavit it has been stated that there are adverse entries to the credit of the petitioner. Therefore, submission of learned counsel for the petitioner cannot be accepted that the recommendation in the sealed cover is positive in his favour for his promotion. Whether the report in the sealed cover in compliance of Government Order No. 15/85/198-Karmik-1, dated 30.11.1983, is in favour of the petitioner for his promotion or otherwise, can be known only after the sealed cover is opened by the authorities concerned. Since the petitioner has already retired, the respondents are bound to disclose whether the petitioner was entitled to the promotion as per the report of the Selection Committee or not, so that his case may accordingly be considered.

(9) In the circumstances, this writ petition is disposed of with the direction that the authorities concerned shall open the recommendation of the Selection Committee with regard

to the petitioner and shall also consider the same (whether he is entitled to the notional promotion), within a period of three months from the date certified copy of this order is produced before such authority. And if it is found that the petitioner is entitled to the notional promotion, the matter relating to the payment of arrears of salary shall also be considered. No order as to costs.

**(Prafulla C. Pant, J.)**

Dt.26.09.2007.
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